

FISHERIES, COMMERCE, AND NAVIGATION IN NORTH AMERICA

Treaty signed at Washington June 5, 1854

Senate advice and consent to ratification August 2, 1854

Ratified by the President of the United States August 9, 1854

Ratified by the United Kingdom August 17, 1854

Ratifications exchanged at Washington September 9, 1854

Entered into force September 9, 1854; operative March 16, 1855

Proclaimed by the President of the United States September 11, 1854

*Terminated March 17, 1866*¹

10 Stat. 1089; Treaty Series 124²

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain to avoid further misunderstanding between their respective citizens and subjects, in regard to the extent of the right of fishing on the coasts of British North America, secured to each by Article I. of a convention between the United States and Great Britain, signed at London on the 20th day of October, 1818;³ and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's Possessions in North America and the United States in such manner as to render the same reciprocally beneficial and satisfactory, have respectively named Plenipotentiaries to confer and agree thereupon—that is to say, the President of the United States of America, William L. Marcy, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James, Earl of Elgin and Kincardine, Lord Bruce, and Elgin, a Peer of the United Kingdom, Knight of the Most Antient and Most Noble Order of the Thistle, and Governor General in and over all Her Britannic Majesty's Provinces on the Continent of North America, and in and over the Island of Prince Edward; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

¹ Pursuant to notice of termination given by the United States Mar. 17, 1865.

² For a detailed study of this treaty, see 6 Miller 667.

³ TS 112, *ante*, p. 57.

ART. I

It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States fishermen by the above mentioned convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several Islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those Colonies and the Islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: provided that in so doing, they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers, and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And it is further agreed that in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen contained in this Article, and that of fishermen of the United States contained in the next succeeding Article, apply, each of the High Contracting Parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that they will impartially and carefully examine and decide to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this and the next succeeding Article; and such declaration shall be entered on the record of their proceedings. The Commissioners shall name some third person to act as an Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire in cases of difference or disagreement between the Commissioners. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the Commissioners or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different

person shall be appointed or named as aforesaid to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such Commissioners shall proceed to examine the coasts of the North American Provinces and of the United States embraced within the provisions of the first and second articles of this treaty, and shall designate the places reserved by the said Articles from the common right of fishing therein.

The decision of the Commissioners and of the Arbitrator or Umpire shall be given in writing in each case, and shall be signed by them respectively.

The High Contracting Parties hereby solemnly engage to consider the decision of the Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him, respectively.

ART. II

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, except shell-fish, on the Eastern sea coasts and shores of the United States, North of the 36th parallel of North Latitude, and on the shores of the several Islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea coasts and shores of the United States and of the said Islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the Islands aforesaid, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ART. III

It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British Colonies, or of the United States, shall be admitted into each country respectively free of duty.

SCHEDULE

Grain, flour, and breadstuffs of all kinds.
Animals of all kinds.
Fresh, smoked, and salted meats.
Cotton—wool, seeds, and vegetables.
Undried fruits. Dried fruits.
Fish of all kinds.

Products of fish and of all other creatures living in the water.

Poultry. Eggs.

Hides, furs, skins or tails undressed.

Stone or marble in its crude or unwrought state.

Slate.

Butter, cheese, tallow.

Lard, horns, manures.

Ores of metals of all kinds.

Coal.

Pitch, tar, turpentine, ashes.

Timber and lumber of all kinds, round, hewed and sawed, unmanufactured in whole or in part.

Firewood.

Plants, shrubs, and trees.

Pelts, wool.

Fish-Oil.

Rice, broomcorn, and bark.

Gypsum, ground, or unground.

Hewn or wrought or unwrought burr or grindstones.

Dye-stuffs.

Flax, hemp, and tow unmanufactured.

Unmanufactured tobacco.

Rags.

ART. IV

It is agreed that the citizens and inhabitants of the United States shall have the right to navigate the river St. Lawrence and the canals in Canada used as the means of communicating between the great Lakes and the Atlantic Ocean, with their vessels, boats, and crafts, as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects, it being understood, however, that the British Government retains the right of suspending this privilege on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operation of Art. III. of the present treaty in so far as the Province of Canada is affected thereby, for so long as the suspension of the free navigation of the river St. Lawrence or the canals may continue.

It is further agreed that British subjects shall have the right freely to navigate Lake Michigan with their vessels, boats, and crafts, so long as the privilege of navigating the river St. Lawrence secured to American citizens by the above clause of the present Article shall continue, and the Government of the United States further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States.

And it is further agreed that no export duty or other duty shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river St. John and its tributaries and

floated down that river to the sea, when the same is shipped to the United States from the Province of New Brunswick.

ART. V

The present treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and by the Provincial Parliaments of those of the British North American Colonies which are affected by this treaty on the one hand, and by the Congress of the United States on the other.⁴ Such assent having been given, the treaty shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of ten years, or at any time afterwards.

It is clearly understood, however, that this stipulation is not intended to affect the reservation made by Article IV of the present treaty with regard to the right of temporarily suspending the operation of Articles III and IV thereof.

ART. VI

And it is hereby further agreed that the provisions and stipulations of the foregoing Articles shall extend to the Island of Newfoundland, so far as they are applicable to that Colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States shall not embrace in their laws enacted for carrying this treaty into effect, the Colony of Newfoundland, then this Article shall be of no effect, but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining Articles of this treaty.

ART. VII

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in Washington, within six months from the date hereof, or earlier, if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done, in triplicate, at Washington, the fifth day of June, Anno Domini one thousand eight hundred and fifty-four.

W. L. MARCY	[SEAL]
ELGIN & KINCARDINE	[SEAL]

⁴ Act of British Parliament of Feb. 19, 1855 (45 *British and Foreign State Papers* 609) and the President's proclamation of Mar. 16, 1855 under sec. 1 of the act of Aug. 5, 1854 (10 Stat. 1179). For further details see 6 Miller 736.